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REPORT
101-160

THE ANTIDRUG, ASSAULT WEAPONS LIMITATION ACT OF 1989

OCTOBER 3 (legislative day, SEPTEMBER 13), 1989.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 747]

The Committee on the Judiciary, to which was referred the bill (S. 747), having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

CONTENTS

		Page
I.	Purpose	1
II.	Legislative history	2
III.	Discussion	3
IV.	Vote of the committee	5
V.	Text of S. 747, as reported	6
VI.	Section-by-section analysis	9
VII.	Cost estimate	12
VIII.	Regulatory impact statement	13
IX.	Additional views of Senator Kennedy	14
X.	Minority views of Senator Thurmond, Senator Hatch, Senator Simpson, Senator Grassley, and Senator Humphrey	16
XI.	Changes in existing law	29

I. PURPOSE

The purpose of the proposed legislation, as amended, is to reduce the number of deaths and injuries attributable to assault-type semi-automatic firearms abuse by drug traffickers and violent

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criminals. This purpose is to be accomplished by limiting the number of assault weapons available for commercial transaction and personal possession; by enhancing the penalty for use of an assault weapon in the commission of a drug-related or violent crime; by authorizing criminal penalties and mandatory minimum sentences for theft of a firearm; by enhancing penalties for smuggling firearms into the United States while engaged in, or in the furtherance of, drug trafficking; by requiring mandatory revocation of federally supervised release for those possessing a firearm anytime before their supervised release expires; by requiring the Department of Justice to conduct a study to determine the effect of the firearms limitation on drug-related and violent crime; and by requiring an owner of an assault weapon to acquire a copy of form 4473 from any federally-licensed firearms dealer.

II. Legislative History

The Antidrug Assault Weapons Limitation Act of 1989 was introduced by Senator DeConcini on April 11, 1989. Prior to the introduction of S. 747, a hearing chaired by Senator Simon was held before the Constitution Subcommittee on February 10, 1989, to consider S. 386, the Assault Weapon Control Act of 1989 (an assault weapons related bill introduced by Senator Metzenbaum on Feb. 8, 1989). On May 5, 1989, a second hearing was conducted by Senator Simon before the Constitution Subcommittee to consider S. 747 and S. 386. A variety of witnesses testified, both in favor of and in opposition to legislation addressing assault weapons abuse and general firearms issues. The proposals were supported by law enforcement, the medical community and others, while being opposed by pro-gun advocates, such as the National Rifle Association.

On April 19, 1989, the Constitution Subcommittee reported, without recommendation, S. 747. On July 20, 1989, the Judiciary Committee considered S. 747. At that time, Senator DeConcini offered an amendment, in the nature of a substitute, which was accepted by the committee. On July 20, 1989, the full Committee on the Judiciary ordered S. 747, as amended, favorably reported.

III. Discussion

S. 747 addresses the growing problem associated with the abuse of assault weapons by drug traffickers and other criminals. S. 747 prohibits further importation of any firearm designated as an "assault weapon" and makes domestic commerce and possession subject to additional provisions. Private ownership and transferability are limited to those assault weapons legally owned before the effective date of the act, thus limiting the number of assault weapons in circulation.

Specifically, section 2 prohibits transfer, import, transport, shipping, receiving or possession of an assault weapon, as defined in section 3, except if by the authority of the United States or any state or political subdivision or if lawfully possessed prior to the effective date. By limiting the number of assault weapons introduced into the market, it is anticipated that the number of these types of firearms made available to the criminal element will be reduced. S. 747, combined with the ban on imported firearms issued by Presi-

dent Bush, will serve to reduce the pool of firearms available for illegal use. According to testimony by the Drug Enforcement Administration,[1] in 1987–88 machine gun seizures declined while seizures of all other firearms increased. Reducing the availability of the listed semi-automatic assault weapons should have similar results to the 1986 ban on new, fully automatic firearms, i.e., diminish the supply.

For the past decade, and especially in the last 3 years, the use of assault weapons while engaged in illegal drug trafficking has escalated to epidemic proportions. As Clarence Dupnik, Sheriff of Pima County, Arizona and Arizona representative to Operation Alliance,[2] indicated in his oral testimony before the Subcommittee on the Constitution of the Judiciary Committee on May 5, 1989, virtually every drug seizure taking place today along the Southwest border has an assault weapon involved.[3] While assault weapons account for 1 million, or about 0.5 percent, of the 200 million firearms privately owned in the United States, they were used in one of every 10 crimes that resulted in a Bureau of Alcohol, Tobacco and Firearms (BATF) firearms trade last year.[4] Based on a study by The Atlanta Journal Washington Bureau, an assault weapon is 20 times more likely to be used in a crime than a conventional firearm.[5] The Atlanta Journal study further indicates that even though assault weapons account for less than 1 percent of the total number of firearms privately owned, these types of firearms surfaced in approximately 30 percent of all firearms traced to organized crime (including drug cartel activity), gun trafficking, and crimes committed by terrorists in the United States during 1988 and the first quarter of 1989.[6]

However, even after acknowledging the escalating problem of assault weapon abuse, there still remained the difficult problem of defining an assault weapon, thereby distinguishing it from every other semi-automatic firearm legitimately used for hunting and other sporting purposes. Because of the concerns expressed by both

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[1] Transcript of proceedings, hearing before the Subcommittee on Crime of the House Committee on the Judiciary on Legislation Relating to Assault Weapons and Other Firearms Issues, 101st Cong., 1st Sess. (1988) (Statement of Peter Gruden, Asst. Admin. for Policy and Inspection, Drug Enforcement Administration at 107).

[2] Operation Alliance is a Federal initiative along the Southwest border coordinating Federal, State and local law enforcement agencies along the border and implementing special drug enforcement operations.

[3] In his opening remarks before the Constitution Subcommittee Sheriff Dupnik testified that:

> Southern Arizona, with Tucson as the funnel, is a hot bed of narcotics-related crime in 1989. And, yes, semi-automatic assault weapons are playing an ever-increasing role in the crime wave.
>
> According to the [BATF], more than 500 AK-47s have been smuggled into Mexico from the Tucson area in the last year alone. . . . Believe me, the AK-47 has become the weapon of choice by the Mexican Connection."
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> • • • • • • •
>
> The commander of our own local multi-agency narcotics strike force in Tucson tells me that each time his unit obtains a search warrant in a drug case, it finds some type of assault weapon is involved; that is, every time. The presence of these weapons has become the rule, not the exception.

Transcript of proceedings, hearing on S. 386 and S. 747 before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 101st Cong., 1st Sess. (1989) (Statement of Sheriff Clarence Dupnik at 46).

[4] Assault Guns Muscling In On Front Lines of Crime, Atlanta Journal, May 21, 1989, at A1, col. 2.

[5] Id.

[6] Id.

the supporters and detractors of legislation of this nature, the final solution lists specific firearms whcih will be treated as assault weapons for statutory purposes.[7] Consequently, section 3 sets forth a list of nine types, or fourteen firearms, which, based on the large number of BATF traces of these nine types in the past 5 years, and because of their extremely limited or non-existent sporting purpose, are covered by the 3-year prohibition.[8] By comparison, under existing statutory authority,[9] on July 7, 1989, President Bush permanently banned the importation of 43 types of semi-automatic firearms.[10]

In addition to prohibiting the introduction of more of these types of assault weapons into the market for a 3-year study period, S. 747 increases penalties for use of firearms during the commission of various crimes. Section 5 provides for a mandatory increased penalty of 10 years for the use of an assault weapon during, or in relation to, the commission of a crime of violence or a drug trafficking crime. Section 7 requires enhanced penalties of not less than 2 years, or more than 10 years, for theft of a firearm, and enhanced penalties of up to 10 years for smuggling firearms into the United States while engaged in drug trafficking. Under section 9, a person possessing a firearm in violation of, and prior to the expiration of,

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[7] S. 747, as originally drafted, included the following subsections to section 3. These subsections would have included all firearms identical, or nearly identical, to the firearms listed in section 3 in the coverage of the firearms limitations. The following subsections were deleted during consideration of S. 747 before the full committee:

(B) all other modela by the same manufacturer with the same design which may have slight modifications or enhancements including a folding stock; adjustable sight; case deflector for left-handed shooters; left-handed fire adaptor; shorter barrel; wooden, plastic, or metal stock; large size magazine; different caliber, provided the caliber exceeds .22 rimfire; bayonet mount; tripod or bipod mount; or flash suppresser; and

(C) any other firearm with an action design identical or nearly identical to an assault weapon specified in subparagraph (A) which has been redesigned from, renamed, renumbered, or patterned after one of such specified assault weapons regardless of the company of production or country of origin, or any firearm which has been manufactured or sold by another company under a licensed agreement to manufacture or sell an identical or near identical assault weapon as those specified in subparagraph (A), regardless of the company of production or country of origin.

[8] The firearms included in coverage of S. 747 are:
—Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),
—Action Arms Israeli Military Industries UZI and Galil,
—Berretta AR–70 (SC–70),
—Colt AR–15 and CAR–15,
—Fabrique Nationale FN/FAL, FN/LAR, and FNC,
—MAC 10 and MAC 11,
—Steyr AUG,
—INTRATEC TEC–9, and
—Street Sweeper and Striker 12.

[9] 18 U.S. Code 925 reads in pertinent part:

(d) The Secretary shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition—

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; . . .

[10] The firearms included in the administration's ban on importation are:

AK47 type, AK47S type, AK74, AKS, AKM type, AKMS type, 84S type, ARM type, 84S1 type, 84S3 type, HK91, HK93 type, HK 94 type, G3SA type.

K1 type, K2 type, AR100 type, M14S type, MAS223 type, SIG 550SP type, SIG 551SP type, CIS SR888 type, SKS type with detachable magazine.

86S type, 86S7 type, 87S type, Galil type, Type 56 type, Type 56S type, Valmet M76 type, Valmet M78 type, M76 counter sniper type, FAL type.

L1A1A type, SAR 48 type, AUG type, FNC type, Uzi carbine, Algimec AGMI type, AR180 type, Australian Automatic Arms SAR type, Beretta AR70 type, Beretta BM59 type.

Dept. of Treasury, BATF News Release, July (1989).

federally supervised release faces mandatory revocation of supervised release.

Section 6 requires current owners of a firearm listed in section 3, who purchased the firearm prior to the act's effective date, to acquire a form 4473 [11], or equivalent, from any federally licensed gun dealer. This must be done within 90 days following the Secretary of the Treasury issuing regulations for the request and delivery of such form 4473, or equivalent. The Secretary is directed to prescribe said regulations within 90 days after the date of enactment. Furthermore, section 6 prohibits the sale or delivery, or the purchase or receipt of a listed firearm unless the purchaser completes a form 4473, or equivalent, and both the seller and the purchaser retain a copy of form 4473. Knowing failure to acquire a form 4473, or equivalent, by a current owner may result in a fine of up to $1,000, or imprisonment of up to 6 months, or both (section 7). Sale or delivery, or purchase or receipt, of a listed firearm without completing a form 4473, or equivalent, would result in treatment of the action under sections 922–925 of title 18, U.S. Code.[12]

The remaining sections of S. 747, sections 10 and 11, direct the Justice Department to conduct an 18-month study on the effect of the legislation on drug trafficking and violent crime, and repeals the act, except for the firearm penalty provisions, 3 years after the effective date.

IV. Vote of the Committee

On April 19, 1989, the Subcommittee on the Constitution, a quorum being present, reported S. 747 to the full Judiciary Committee without amendment and without recommendation, and reported S. 386 to the full Judiciary Committee as amended and without recommendation.

On July 20, 1989, the Committee on the Judiciary, a quorum being present, favorably reported S. 747, as amended in the nature of a substitute, by a vote of 7 to 6. The vote was as indicated below:

YEAS (7)	NAYS (6)	NOT VOTING
Biden	Heflin	Specter
Kennedy	Thurmond	
Metzenbaum	Hatch	
DeConcini	Simpson	
Leahy	Grassley	
Simon	Humphrey	
Kohl		

[11] See appendix A.

[12] Penalties for basic firearms violations of the Gun Control Act of 1968 (18 U.S.C. sections 922–925) apply: Felony subject to maximum imprisonment of 5 years or a fine of up to $250,000 ($500,000 if an organization), or both. Generally, proof of "willfulness" is required for conviction, but for specified offenses a demonstration of "knowledge" suffices. [18 U.S.C. 924(a) and 18 U.S.C. 3571]. CRS Rep. 89–375 GOV (1989).

V. TEXT OF S. 747, AS REPORTED

[S. 747, 101st Cong., 1st Sess.]

A BILL To amend chapter 44 of title 18, United States Code, regarding assault weapons

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antidrug, Assault Weapons Limitation Act of 1989".

SEC. 2. Section 922 of title 18, United States Code, is amended by adding at the end thereof the following:

"(q)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer, import, transport, ship, receive, or possess any assault weapon.

"(2) This subsection does not apply with respect to—

"(A) transferring, importing, transporting, shipping, and receiving to or by, or possession by or under, authority of the United States or any department or agency thereof, or any State or any department, agency, or political subdivision thereof, of such an assault weapon, or

"(B) any lawful transferring, transporting, shipping, receiving, or possession of such a weapon that was lawfully possessed before the effective date of this subsection.".

SEC. 3. Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following:

"(25) The term 'assault weapon' means any firearm designated as an assault weapon in this paragraph, including:

"(A) Norinco, Mitchell, Poly Technologies Avotomat Kalashnikovs (all models),

"(B) Action Arms Israeli Military Industries UZI and Galil,

"(C) Beretta AR-70, (SC-70),

"(D) Colt AR-15 and CAR-15,

"(E) Fabrique Nationale FN/FAL, FN/LAR, and FNC,

"(F) MAC 10 and MAC 11,

"(G) Steyr AUG,

"(H) INTRATEC TEC-9, and

"(I) Street Sweeper and Striker 12.".

SEC. 4. Chapter 44 of title 18, United States Code, is amended—

(1) by adding at the end thereof the following new section:

"§ 931. Additional assault weapons

"The Secretary, in consultation with the Attorney General, may, when appropriate, recommend to the Congress the addition or deletion of firearms to be designated as assault weapons."; and

(2) in the table of sections by adding at the end thereof the following new item:

"931. Additional assault weapons."

SEC. 5. Section 922 of title 18, United States Code, is further amended by adding at the end thereof the following:

"(r)(1) Whoever, during and in relation to the commission of a crime of violence or a drug trafficking crime (including a crime of violence or drug trafficking crime, which provides for an enhanced punishment if committed by the use of a deadly or dangerous

weapon or device) for which he may be prosecuted in a court of the United States, uses or carries an assault weapon, shall, in addition to the punishment provided for the commission of any such other crime committed by the defendant, be sentenced to a term of imprisonment for not less than 10 years.

"(2) For purposes of this subsection, the term 'drug trafficking crime' means any felony punishable under the Controlled Substances Act (2 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).".

SEC. 6. Section 922 of title 18, United States Code, is further amended by adding at the end thereof the following:

"(s)(1) It shall be unlawful for any person to sell, ship, or deliver an assault weapon to any person who does not fill out a form 4473 (pursuant to 27 CFR 178.124), or equivalent, in the purchase of such assault weapon.

"(2) It shall be unlawful for any person to purchase, possess, or accept delivery of an assault weapon unless such person has filled out such a form 4473, or equivalent, in the purchase of such assault weapon.

"(3) If a person purchases an assault weapon from anyone other than a licensed dealer, both the purchaser and the seller shall maintain a record of the sale on the seller's original copy of such form 4473, or equivalent. The purchaser and seller shall both retain copies of such form for all subsequent transactions regarding such assault weapon.

"(4) Any current owner of an assault weapon which required retention of such form 4473, or equivalent, pursuant to the provisions of this subsection who, prior to the effective date of this subsection purchased such a weapon, shall, within 90 days after the issuing of regulations by the Secretary pursuant to paragraph (5) of this section, request a copy of such form from any licensed dealer, as defined in this title, in accordance with regulations prescribed by the Secretary pursuant to paragraph (5) of this section.

"(5) The Secretary shall, within 90 days after the date of enactment of this section, prescribe regulations for the request and delivery of such form 4473, or equivalent."

SEC. 7. Section 924 of title 18, United States Code, is amended by—

(1) redesignating subsections (f) and (g), and any references to such subsections, as added by section 6211 of Public Law 100–690, as subsections (g) and (h) respectively; and

(2) adding at the end thereof the following:

"(i) Whoever knowingly fails to acquire such form 4473, or equivalent (pursuant to 27 CFR 178.124), with respect to the lawful transferring, transporting, shipping, receiving, or possessing of any assault weapon, as required by the provisions of this chapter, shall be fined no more than $1,000, or imprisoned for not more than 6 months, or both.

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not less than 2 or more than 10 years, and may be fined under this title.

"(k) Whoever, with the intent to engage in, or to promote, conduct which—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (212 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3));

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned for not more than 10 years, fined under this title, or both.".

SEC. 8. Section 922(g)(1) of title 18, United States Code, is amended by inserting before the semicolon at the end thereof the following: "or a violation of section 924(i) of this chapter".

SEC. 9. Section 3583 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the term of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.".

SEC. 10. (a) The Attorney General is authorized and directed to investigate and study the effect of the provisions of this Act and the amendments made by this Act and any impact therefrom on violent and drug trafficking crime. Such study shall be done over a period of 18 months, commencing 12 months after the date of enactment of this Act.

(b) No later than 30 months after the date of enactment of this Act, the Attorney General shall prepare and submit to the Senate of the United States, a report setting forth in detail the findings and determinations made pursuant to subsection (a).

SEC. 11. Unless otherwise provided, this Act and the amendments made by this Act shall become effective 30 days after the date of enactment of this Act. This Act, except for subsection (1) of section 7, portions of subsection (2) of section 7 adding subsections (j) and (k) to section 924 of title 18, United States Code, and section 9, shall be effective for a period of 3 years. At the end of such 3-year period this Act and the amendments made by this Act, except for subsection (1) of section 7, portions of subsection (2) of section 7 adding subsections (j) and (k) to section 924 of title 18, United States Code, and section 9, shall be repealed.

VI. Section-by-Section Analysis

SECTION 2

This section amends section 922 of title 18, United States Code, to prohibit transfer, import, transport, shipping, receiving or possession of assault weapons, except if by, or under the authority of the United States, or any department or agency, or any state or department, agency, or political subdivision thereof (922(q)(1)(A)), or if lawfully possessed prior to the effective date of the section and lawfully transferred, transported, shipped, received or possessed (922(q)(1)(B)). Despite claims to the contrary, polls have consistently shown that over 70 percent of adults nationwide favor Federal legislation in this area.[13] In an effort to ensure the rights of legal gun owners to maintain legal possession of these types of firearms, section 2 specifically exempts those lawfully possessing assault weapons from possession and transfer prohibitions. Furthermore, to enable law enforcement personnel to achieve equal firepower of that of drug traffickers, such as young gang drug cartel members, section 2 provides an exemption for Federal, State and local agencies. The committee is aware of the many uses of these types of firearms,[14] and although section 2 limits the number of these types of firearms in commerce, it is not intended to limit the legal uses of these firearms.

SECTION 3

Section 3 amends section 921(a) of title 18, U.S. Code, adding a list of firearms to be designated as "assault weapons" (25)(A)(i)–(ix). These nine types of listed firearms are those most traced by the BATF, are identified by law enforcement representatives as being the firearms commonly encountered in drug raids, and are firearms with a limited, or non-existent, sporting purpose. Opponents of this legislation argue that these firearms are distinguishable from all other semi-automatic firearms.[15] However, according to the BATF, there are certain features of a firearm which allow for a determination of the suitability for, or adaptability to, sporting purposes of a firearm.[16] The firearms listed have limited, or nonexisting, sporting purposes. Even assuming these firearms are utilized for sporting purposes, S. 747 does not prohibit the continued use for such purposes.

SECTION 4

Section 4 amends chapter 44 of title 18, adding a new section 931, which provides that the Secretary of the Treasury may recommend to Congress additions or deletions to the list of designated assault weapons. This section does not allow the Secretary to add or delete any firearms listed in section 3. The Secretary's power is only advi-

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[13] See appendix B.

[14] Possible uses include, but are not limited to, educational presentations, exhibitional use, and motion picture and television production.

[15] Transcript of proceedings, hearing on S. 386 and S. 747 before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 101st Cong., 1st Sess. (1989) (Statement of Officer Leroy Pyle, Detective Jimmy Trahain and Edward C. Ensell at 104).

[16] Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, Report and Recommendation of the ATF Working Group on the Importation of Certain Semiautomatic Rifles (1989).

sory. No changes in the list can be made without congressional action.

SECTION 5

This section amends section 922 of title 18, U.S. Code, adding subsection (s)(1), to provide a mandatory enhanced penalty of 10 years for the use of an assault weapon during the commission of a violent crime or drug related crime. The committee believes that because of the increased potential for harm to innocent victims and law enforcement personnel resulting from the use of an assault weapon, an enhanced prison term of 10 years is appropriate.

SECTION 6

Section 6 amends section 922 of title 18, U.S. Code, adding a new section (s). Subsection (1) of new section (s) prohibits the sale or delivery of an assault weapon to any person who does not complete a form 4473 (pursuant to 27 CFR 178.124), in the purchase of an assault weapon. Subsection (2) prohibits the purchase or receipt of an assault weapon unless the purchaser or receiver completes a form 4473. Subsection (3) requires both the purchaser and seller (if other than a licensed dealer) of an assault weapon to maintain a record of the sale on the seller's original copy of form 4473, and further requires both parties to retain a copy of the 4473. Subsection (4) of section (s) requires current owners of an assault weapon, who purchased such assault weapon prior to the effective date of this subsection, to acquire a copy of form 4473 from any federally licensed firearm dealer, within 90 days after the Secretary of the Treasury issues regulations prescribing the request and delivery of such form. The last subsection of section (s), subsection (5), directs the Secretary to prescribe the appropriate regulations within 90 days of the date of enactment of section 6.

The committee does not intend this section to create a registration system for assault weapons. Currently, a form 4473 is required to be completed when purchasing any firearm from a federally licensed firearms dealer. The dealer is then responsible for maintaining a current file of the completed forms. At no time are the completed forms forwarded to the Federal Government, except in the case of a firearms dealer discontinuing business. At that time the forms found in the licensed dealer's files are transferred to the archives of the BATF for storage purposes. This has been the practice since 1968.

Requiring purchasers and sellers of assault weapons to maintain a copy of form 4473 serves two purposes. First, it will allow legal owners of these types of firearms to easily establish legal possession. Second, and more importantly, it provides law enforcement with another tool on which to prosecute drug dealers and violence prone criminals such as youth gang members. It is anticipated that individuals, such as youth gangs, will fail to complete form 4473 when acquiring or transferring these firearms, thus making themselves vulnerable to prosecution on these offenses. Many gang members and drug traffickers are not felons, and can legally own

firearms.[17] This provision would give prosecutors another weapon in their arsenal to use in the drug war.

SECTION 7

This section amends section 924 of title 18, U.S. Code, adding new subsections (i), (j) and (k). Subsection (i) provides a penalty of up to $1,000, or imprisonment of up to 6 months, or both, for the knowing failure by current assault weapon owners to acquire a form 4473 as directed by the legislation and ensuing regulations. The committee believes that the possibility of a fine or incarceration will ensure that the form 4473 requirement will be met by current legal assault weapon owners.

Subsection (j) creates an offense for theft of a firearm which at any time moves, or has moved, in interstate or foreign commerce. Currently, the transportation, receipt, or disposition of a firearm known to have been stolen receives statutory coverage,[18] as does the theft of a firearm from a shipment moving in interstate commerce.[19] In addition to this resulting increase in Federal jurisdiction, subsection (j) provides a mandatory minimum penalty for a violation of 2 years and not more than 10 years, whereas the present penalty has no minimum.

Subsection (k) establishes a new offense for smuggling firearms into the United States with the intent to engage in, or to promote, drug trafficking or violent crime. The new offense carries a penalty of up to 10 years imprisonment, and fines under title 18. In light of the continuing narcotics smuggling in the gulf coastal region, and the increased drug smuggling along the southwest border, the committee agrees that this is an appropriate measure.

SECTION 8

Section 8 amends section 922(g)(1) of title 18, U.S. Code, making the knowing failure by current owners of assault weapons to acquire a form 4473 a disabling offense. Consequently, it would be unlawful for an individual to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, if an individual knowingly fails to obtain form 4473.

SECTION 9

This section requires mandatory revocation of Federal supervised release for those possessing a firearm, where the court has ordered as a condition of supervised release that the defendant not possess a firearm anytime before their supervised release expires. This provision mirrors that of section 6214 of the Anti-Drug Abuse Act of 1988 concerning revocation of probation.

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[17] 18 U.S.C. 922 prohibits an individual who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year, who is a fugitive from justice, and for other reasons, from owning or possessing a firearm or ammunition.

[18] 18 U.S.C. 844(h) and 922 (i) and (j).

[19] 18 U.S.C. 659.

SECTION 10

This section directs the Department of Jusice of complete a study of the effect of the assault weapons limitation on violent crime and drug related crime—the study to be conducted over an 18-month period beginning 12 months after the date of enactment of the act.

SECTION 11

This section provides that the effective date of the bill be 30 days after the date of enactment. This section also provides for a 3-year sunset clause, repealing the provisions regarding assault weapons while leaving in force the firearms violation-related penalty provisions after the 3-year period has run.

VII. Cost Estimate

In accordance with paragraph 119a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 2, 1989.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 747, the Anti-Drug, Assault Weapons Limitation Act of 1989, as ordered reported by the Senate Committee on the Judiciary, July 20, 1989.

Based on information provided by the Bureau of Alcohol, Tobacco, and Firearms and the International Trade Commission, CBO estimates that enactment of this bill would result in no significant additional costs to the Federal Government, and would have no significant effect on Federal revenues. S. 747 would ban certain semiautomatic assault weapons.

Because this bill would ban certain imports and would prevent certain domestic sales and transfers, it could result in a loss of customs duties and certain excise taxes. CBO estimates, however, that the forgone customs duties would be negligible; and the Joint Committee on Taxation estimates the effects on revenues from taxes would also be negligible. CBO also expects that there would be no significant enforcement costs associated with the provisions of this bill.

Enactment of this bill would not effect the budgets of State or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Michael Sieverts, who can be reached at 226–2860, and Eric Nicholson, who can be reached at 226–2678.

Sincerely,

Robert D. Reischauer,
Director.

VIII. Regulatory Impact Statement

Pursuant to paragraph 11(b) Rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the act will not have a direct regulatory impact.

IX. ADDITIONAL VIEWS OF MR. EDWARD M. KENNEDY

I support S. 747, but we should do more. Assault weapons put awesome killing power in the hands of drug runners, hate groups and other criminals. These weapons go by names like "Street Sweeper," "Bushmaster," "Paratrooper," and "Commando." The ease with which they can be obtained is fueling the arms race on the streets of every community in America. They should be banned outright.

The big test is whether we have the will to extend the Bush administration's ban on imported assault weapons to those made in America and sold over the counter with few questions asked. There is no justification for the administration's double standard. The import ban covers only 25 percent of assault weapons sold in the United States. The 75 percent that are manufactured domestically include the TEC–9 and the Ruger Mini–14, which are among the weapons of choice for drug traffickers.

S. 747 is a weak compromise that covers only a small portion of the domestic assault weapon problem. Instead, we should direct the Bureau of Alcohol, Tobacco and Firearms to apply the same exacting standards to domestic weapons that it applied in determining which imports to ban. We should authorize the Treasury Secretary to ban domestic assault weapons that are found to be dangerous and that serve no sporting purpose. It makes no sense to ban 43 types of imported weapons under this standard, but permit similarly menacing weapons, manufactured here, to continue to be sold. Fear of the National Rifle Association is no excuse for the perpetuation of this deadly double standard.

Sales of assault weapons across the United States increased from 4,000 in 1986 to over 40,000 last year. Many of these guns wind up in the hands of drug dealers, who use them against police officers and innocent bystanders. Sophisticated firearms have been seized in more than half of all crack arrests.

At a time when budget constraints make it difficult for law enforcement agencies to outfit themselves with basic crime-fighting equipment, drug dealers and other criminals are increasingly able to expand their own firepower by purchasing assault weapons. Too often, measures which would restrict such purposes fail because of the gun lobby's inability to distinguish between the interests of legitimate sportsmen and the serious problem of gun crimes in our society.

Some of the witnesses who appeared before the committee on this issue would have us ignore the weapons and deal only with the criminals. Their arguments are half-right. We should be doing more to combat the criminals. But we should not ignore the weapons they use or the law enforcement officials across the Nation who plead for help in stemming the flow of the ever more powerful weapons used against them. Legislation to restrict assault weapons

has the overwhelming support of local police, including the 90,000 member National Association of Police Organizations, and the 200,000 member Fraternal Order of Police. They are on the front lines of the war on crime. They know what is needed, and so do we.

X. MINORITY VIEWS OF MESSRS. THURMOND, HATCH, SIMPSON, GRASSLEY, AND HUMPHREY

Over the last several years we have witnessed a steady attack on the second amendment rights of law abiding Americans. For the most part, these attacks, often in the name of reducing crime, have focused on the availability of and access to handguns. In the 101st Congress, those opposed to the right to bear arms have shifted gears. With the introduction of S. 747 and similar legislative proposals, Congress finds itself confronted with an attack on the right to possess semiautomatic long arms. For dramatic effect, the semiautomatic firearms under attack are being referred to as "assault weapons." Regardless of terminology, S. 747, which will not have any real impact in reducing the number of violent crimes, represents another attempt to infringe on the constitutional right to keep and bear arms, and we therefore oppose the bill.

Definition of "Assault Weapons"

The Bureau of Alcohol, Tobacco and Firearms has no definition of "assault weapon." The military definition—a selective fire weapon capable of firing in either an automatic or semiautomatic mode—is inapplicable to the commercial arena. Indeed, with the enactment of the Firearms Owners Protection Act, the private purchase of new fully automatic machine guns is banned and the possession of existing automatic machine guns is highly restricted, requiring an extensive background check and permission from both local law enforcement and the Federal Government before they can be obtained. The proponents of this bill and similar restrictive legislation have sought a workable definition of "assault weapons," other than simply listing guns by brand name and model, but they have been unable to produce one.

This lack of a definition for "assault weapons" has been a major stumbling block from the outset of the consideration of this legislation. The firearms listed in this bill employ a semiautomatic firing action. They are not fully automatic, neither are they readily or easily convertible to fully automatic. In fact, the semiautomatic firing action employed in these firearms is the same as the action found in every popular semiautomatic hunting rifle. Furthermore, the technology behind the semiautomatic firing action has been employed for well over 100 years.

In the attempt to generate support for banning these guns, they have been referred to as "assault weapons," a term which conjures up some idea of terrible weapons that have no purpose other than killing innocent people. When pressed on a definition for this term, the typical response is that these are dark, sinister-looking weapons that are well suited for combat—an "I know one when I see one" type of definition.

Regardless of what they are called, these firearms are functionally no different from semiautomatic hunting rifles. A semiautomatic rifle used for hunting has the same capability as a semiautomatic rifle that cosmetically looks more sinister. And that is the only difference between many hunting rifles and the firearms listed in this legislation—their appearance. The weapons in S. 747 are referred to individually by model type and name because it is inherently impossible to define "assault weapon" in such a way so as not to also ban many hunting rifles. The bill's specific ban of firearms causes us grave concern about the potential impact on other semiautomatic weapons. If the Congress is willing to ban some weapons simply because they look menacing, then there will surely be attempts to ban all semiautomatic weapons because they are functionally the same.

Gun Control Versus Crime Control

As stated in the majority report, the purpose of this bill "is to reduce the number of deaths and injuries attributable to assault-type semi-automatic firearms abuse by drug traffickers and violent criminals." The assumption by proponents of S. 747 is that drug traffickers and violent criminals rely on such firearms being available in the commercial arena. While we agree that this bill, if enacted into law, would reduce the number of these firearms available to law-abiding citizens, we do not believe that it will restrict access to them by drug traffickers and violent criminals.

As the committee learned during hearings on the assault weapon issue, most criminal firearms are obtained through illegal means. It therefore seems highly likely that a drug trafficker who is able to smuggle large amounts of illegal drugs into the country will have little difficulty in obtaining these weapons by illegal means. We do not believe based on testimony received by the committee, that the bill will affect the overall incidence of death and injury resulting from crime. If denied a particular type of weapon, a violent criminal will simply find another weapon to carry out his or her goal.

As it has been argued time and again, if Congress truly wants to reduce death and injury caused by violent crime, and not merely shift the focus from one weapon to another, then the proper scope of any legislation should be directed at the criminals themselves. As long as the criminal justice system allows violent criminals to commit crimes with little or no threat of apprehension or serious punishment, it will not matter how many guns or weapons we ban. Criminals will continue to find weapons to use in their heinous activity, and law abiding citizens will experience an infringement of their constitutionally protected rights.

We are convinced that the most effective approach toward reducing death and injury due to violent crime must involve major adjustments to the criminal justice system. The Federal death penalty must be reinstated and enforced. Both the exclusionary rule and habeas corpus proceedings must be reformed. Federal and State prison facilities must be expanded, and sentences requiring internment in those facilities must be carried out to their full term. We need additional law enforcement agents and Federal prosecutors. In short, we need to reinforce deterrence in in the criminal justice

system by instituting certain firm, and sure enforcement of our criminal laws.

Statistical Evidence

We also have reservations about some of the claims regarding the role of semiautomatic weapons as used in criminal activities. According to the February 5, 1989, New York Times, Lt. James Moran, commander of the New York City Police Department's Ballistics Unit, stated that of 16,370 guns seized in New York City in 1988, nearly 11,000 were pistols and revolvers. Rifle seizures totalled 1,028, and air guns and shotguns made up the remainder. According to BATF statistics, less than 10 percent of the guns seized by police in the District of Columbia last year were rifles of any kind. Of 72 murder weapons BATF traced, one was a rifle. (Washington Post, March 6, 1989.) These press reports do not indicate that semiautomatic weapons play as large a role in crime as the majority report suggests.

These reports were supported by Det. Jimmy L. Trahin, of the Los Angeles Police Department Firearms/Ballistics Unit, who testified before the committee that assault weapons are not the "weapon of choice" of criminals. In his statement, he says, "From an informal survey that we took on over 4000 guns that were taken into custody during a 1-year period, slightly more than 120 would be classified under this definition of assault weapon. That's approximately 3 percent, not the 20–50 percent embellished figures I've been hearing rumored." We should point out that the definiton of assualt weapon to which he refers is the definition included in S. 386, which contains several additional firearms not included in S. 747.

We also strongly disagree with the conclusions of the Atlanta Journal Washington Bureau study cited in the majority report. It is our view that the results of that study do not accurately reflect the use of assault weapons in crimes. The firearms traced by the BATF are traced on request from law enforcement agencies across the country. Those firearms are not necessarily guns used in a crime, and not all firearms involved in crimes are traced. Furthermore, given the high visibility of assault weapons in the media, we would suspect that law enforcement agencies have requested more traces on these types of weapons than on other conventional firearms. We should also note that the BATF has publicly stated that it does not necessarily agree with all of the conclusions that were drawn in that study. We believe that if the BATF were asked to trace all criminal firearms that the percentages cited in the study would be more in line with those expressed by Det. Trahin.

Section Analysis

While the Judiciary Committee has devoted a great deal of time to the consideration of the "assault weapons" issue in general, surprisingly little time has been devoted to the specifics of this bill. There were two hearings in which assault weapons in general and the merits of an earlier version of this bill and other proposals were discussed, but the committee has received little testimony in the way of section-by-section analysis. As we discussed earlier, there is an underlying problem in attempting to define assault

weapons so as not to include hunting weapons. The firing action of the weapons listed in S. 747 is the same as any other semiautomatic weapon. Furthermore, any semiautomatic firearm that employs a detachable ammunition clip or magazine is capable of accepting a clip holding any number of rounds. The only distinction between these firearms and the firearms listed in S. 747 is that the latter look "sinister."

To overcome the definitional problem, S. 747 simply lists those particular firearms which its sponsors would like to ban. This approach, however, raises some questions which have not yet been answered. There appears to be nothing in the bill which would prohibit the manufacturers of the listed firearms from simply changing the names of the firearms or making minor modifications in the firearms to avoid the prohibitions placed on these guns. Would the bill apply to such situations? And, if the bill is intended to prohibit such action by the manufacturers, who will determine which guns are the same or nearly the same as those listed? We oppose any such discretion being granted to the Secretary of the Treasury.

Similar questions arise with respect to those sections of the bill which would require the use of the Federal firearms purchase form, form 4473, for the future transfer of those assault weapons already legally owned. As noted in the majority report, the bill "requires current owners of a firearm listed in section 3, and purchased prior to the Act's effective date, to acquire a form 4473, or equivalent, from any federally licensed gun dealer." The Secretary of the Treasury will promulgate regulations which with which gun owners and dealers must comply, within 90 days. Although the majority report gives no guidance on these regulations, we assume that such regulations would take into account adequate notice to gun owners and possible situations in which a gun dealer might refuse to comply with a form request.

While we assume these circumstances will be fairly handled, additional concerns remain about the application of these sections requiring form 4473. Some concern has been expressed about the use of the copy of form 4473 which must be retained by each current owner of one of the listed guns. Will this form eventually become a carry permit for each individual gun? Will an owner need to carry the form whenever he or she transports or uses the firearm? Will law enforcement agents be empowered to confiscate the listed firearms if the form 4473 is not physically with the firearm at all times? These questions have not been addressed either during the hearings or during committee debate on the bill.

From our analysis of this legislation, the form 4473 requirements appear to be subtle registration requirements. Under new 18 U.S.C. 922(s), as proposed by section 6 of the bill, no later than 90 days after the Secretary of the Treasury issues regulations regarding the acquisition of copies of form 4473, each current owner of a firearm listed in section 3 must obtain a copy of the form that was filled out when the firearm was originally purchased from a licensed dealer. If the firearm was purchased before the forms were originally required or if the current owner is not able to ascertain which dealer from which a previous owner might have purchased the gun, then the owner must go to any other licensed dealer and fill out a new form. [subsection (4).] The dealer and the owner must

each maintain a copy of that form. Thereafter, for each subsequent sale or other transfer of that particular firearm, each new purchaser or owner must fill out a new form 4473 [subsections (1 and 2)]; a record of the sale or transfer must be noted on the earlier copy of form 4473 already held by the seller or transferor [subsection (3)]; and a copy of the new form 4473 and the amended old form 4473 must be maintained by the current seller and purchaser [subsection (3)]; and they are required to obtain copies of any form 4473 that is created from any future transaction regarding that firearm. [subsection (3).]

In other words, while there may not be a central registry for the listed firearms here in Washington, DC., each person who owns one of these firearms when the bill is enacted will become the registrar for that firearm. Such an owner will be required to obtain a copy of the original form 4473. Moreover, the owner must maintain a copy of a new form 4473 when he or she sells or transfers the gun, and, pursuant to the second sentence of 18 U.S.C. 922(s)(3) as added by section 6 of this bill, to obtain copies of all future forms 4473 involved in subsequent transactions involving the firearm. This last requirement is particularly troubling when read in conjunction with section 7, the penalties section of the bill. Under those provisions, any person who knowingly fails to obtain the required copies of form 4473 may be fined up to $1,000 or imprisoned for up to 6 months, or both. If the original owner knows that the subsequent owner has resold the firearm, but the subsequent owner refuses a request to provide the original owner with a copy of the new form 4473, as required in section 6, the original owner is subject to the proposed penalties. Each future owner of the firearm in question is likewise responsible for obtaining copies of forms for all subsequent transactions that might occur after he or she transfers the gun. We believe these sections of the bill are unworkable and unfair. Their full consequences were never analyzed or discussed by any of the witnesses before the committee.

Regulatory and Economic Impact

While the Congressional Budget Office may be correct in its determination that this legislation will result in no significant costs to the Federal, State or local governments, we do take exception with the committee conclusion with respect to regulatory impact. It is our estimate, based on testimony before the committee, that there are currently about 600,000 of the listed guns currently owned in the United States. While there will not be an equal number of owners, the number of individuals and businesses in possession of these weapons, and subject to the regulations that will be promulgated under section 6, is significant. Assuming that most licensed dealers will find it necessary to pass on the costs of producing copies of forms 4473 or generating new forms, there will be some economic impact to individuals, consumers, and businesses. In addition, with respect to businesses, the bill is silent as to the diposition of those firearms that will still be on the store shelves when the bill becomes effective. If the business owners are prohibited from selling these weapons, then the economic impact on these owners will be significant. Furthermore, while one reading of the bill may lead to the conclusion that the bill will not have a signifi-

cant economic impact, for the owners and employees of the businesses that this bill is likely to put out of business, because of the restrictions on sales, the impact will be severe. We also believe, given the requirements surrounding the use of form 4473 to prove legal ownership of the banned weapons, there is a significant paperwork burden that will be placed on law-abiding gun owners.

In summary, the second amendment provides each citizen of this country the right to keep and bear arms in order to help in the preservation of our freedom. By banning the firearms listed in this legislation, the committee would seriously undermine that constitutionally protected right. Moreover, this bill will not keep the listed weapons out of criminals' hands and, even if it did so, those criminals will be able to obtain other weapons to commit their crimes. While the bill's ban on the listed firearms may serve the purpose of appearing to respond to the incidence of violent crime, in our view, such a ban constitutes only a form of gun control, not crime control. Indeed, if the bill's proponents had confidence in gun control as an effective means of crime control, the bill's gun control provisions would not sunset after 3 years. The Senate should reject this measure.

Appendix A

Form Approved: OMB No. 1512-0129 (3/31/91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

FIREARMS TRANSACTION RECORD

PART I — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

SECTION A — MUST BE COMPLETED PERSONALLY BY TRANSFEREE *(BUYER) (See Notices and Instructions on reverse)*

1. TRANSFEREE'S *(Buyer's)* NAME *(Last, First, Middle)*	☐ MALE ☐ FEMALE	2. HEIGHT	3. WEIGHT	4. RACE
5. RESIDENCE ADDRESS *(No., Street, City, County, State, ZIP Code)*		6. DATE OF BIRTH MONTH / DAY / YEAR	7. PLACE OF BIRTH *(City and State or City and Foreign Country)*	

8. CERTIFICATION OF TRANSFEREE *(Buyer)*—An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question.

a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? **A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.*		c. Are you a fugitive from justice?	
		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is *not* required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		e. Have you even been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under **dishonorable** conditions?	
		g. Are you an alien **illegally** in the United States?	
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship.	

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S *(Buyer's)* SIGNATURE | DATE

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) *(See Notices and Instructions on reverse)*

THIS PERSON DESCRIBED IN SECTION A: ☐ IS KNOWN TO ME ☐ HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION *(Driver's license or identification which shows name, date of birth, place of residence, and signature.)*	10. NUMBER ON IDENTIFICATION

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below and on the back to the person identified in Section A.

11. TYPE *(Pistol, Revolver, Rifle, Shotgun, etc.)*	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15. MANUFACTURER *(and importer, if any)*
1.				
2.				

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR *(Seller)* *(Hand stamp may be used)*	17. FEDERAL FIREARMS LICENSE NO. *(Hand stamp may be used)*

THE PERSON MAKING THE ACTUAL FIREARMS SALE MUST COMPLETE ITEMS 18 THROUGH 20

18. TRANSFEROR'S *(Seller's)* SIGNATURE	19. TRANSFEROR'S TITLE	20. TRANSACTION DATE

ATF F 4473 (5300.9) PART I (1-88)

11 TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12 MODEL	13 CALIBER OR GAUGE	14 SERIAL NO	15 MANUFACTURER (and importer, if any)
3.				
4.				
5.				
6.				
Complete ATF F 3310.4 for multiple purchases of handguns (See item 10 below)				

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922 and 923.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. WARNING—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearms laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply *if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.*

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

4. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnessess to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a write... statement, executed under penalties of perjury, stating:

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and

(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

8. Additional firearms purchases made by the same buyer may not be added to this form after the seller has signed and dated it.

9. If more than six firearms are involved, the identification required by Section B, items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than six weapons may be on a separate sheet of paper which must be attached to the form covering the transaction.

10. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

11. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

12. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part I part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part I are filed in the same manner.

DEFINITIONS

1. Over-the-counter Transaction—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

2. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

3. Under indictment or convicted in any court—An indictment or conviction in any Federal, State or Foreign court.

Appendix B

ASSAULT WEAPONS: POLLING DATA

The Gallup Poll
(February 28 - March 2, 1989; N = 1,000 adults nationwide)

"Would you favor or oppose Federal legislation banning the manufacture, sale and possession of semi-automatic assault guns, such as the AK-47?"

	Favor	Oppose	No Opinion
Nationwide	72%	23%	5%
Men	70%	27%	3%
Women	74	19	7
College Grads.	79%	17%	4%
Some College	71	25	4
No College	70	24	6
East	73%	21%	6%
Midwest	72	24	4
South	68	25	7
West	77	18	5
Gun Owners	68%	27%	5%
Non-owners	76	18	6

"In general, do you feel the laws covering the sale of firearms should be made more strict, less strict, or kept as they are now?"

More Strict	Less Strict	Kept Same	No Opinion
70%	6%	22%	2%

The Gallup Poll (Continued)

(February 28 - March 2, 1989; N = 1,000 adults nationwide)

Gun Owners: Types of Guns Owned

	1989	1985	1975	1972
Rifle	31%	26%	30%	26%
Shotgun	28	24	31	27
Pistol	25	22	19	16
Assault gun	1	*	*	*
Other, not sure	2	2	1	*

* Not recorded

NBC/Wall Street Journal

(April 16 - 18, 1989; N = 1,447 adults nationwide)

"Do you think the federal government should ban the sale of assault rifles in the United States, or don't you think so?"

	Yes	No	Not Sure
All	74%	20%	6%
Gun Owners	66	29	5
Not Gun Owners	79	15	6

CBS News/48 Hours Poll

(March 15, 1989; N = 663 adults nationwide)

President Bush's temporary ban on importing assault weapons...

Approve: 76% Disapprove: 18%

Ban on ownership, sale and manufacture of assault weapons...

Approve: 73% Disapprove: 22%

Hotline/KRC for Boston Globe, WBZ-TV and San Francisco Examiner
(March 12 - 14, 1989; N = 1,001 registered voters nationwide)

"Do you think the sale of assault weapons like the AK-47 rifle should or should not be banned?"

Should: 73% Should Not: 19%

Yankelovich Clancy Shulman for Time and CNN
(February 13 - 14, 1989; N = 1,012 adults nationwide)

"Do you think violence from the use of guns is becoming a bigger problem in the country these days or less of a problem?"

Bigger	84%
Less of a problem	5
No difference	7
Not sure	3

"Do you favor or oppose requiring a two-week waiting period before anyone can buy a gun -- to allow time to check a buyer's background?"

Favor	89%
Oppose	9
Not sure	2

"Do you favor or oppose mandatory registration of..."

	Favor	Oppose	Not Sure
Handguns	84%	14%	2%
Shotguns	71	26	3
Rifles	74	23	3
Semi-automatic weapons	77	19	4
All guns of any type	73	23	4

"Do you have any of these types of guns in your home?" [More than one answer allowed.]

Pistol	25%
Shotgun	32
Rifle	32
Assault rifle	3
Do not have any guns	53

STATE POLLING DATA

Arizona, Maricopa County: Arizona Republic Poll
(March 9 - 12, 1989; N = 608 registered voters)

"Do you believe the sale of semi-automatic weapons capable of firing bullets in rapid succession should be banned?"

Yes	No	Don't Know
69%	30%	1%

Connecticut: University of Connecticut Poll
(March 28 - April 5, 1989; N = 500 adults)

Nationwide ban on semi-automatic assault rifles...

	Favor	Oppose
Total:	71%	25%
Rifle Owners:	58%	36%

Florida: Mason-Dixon Poll
(March 29 - April 1, 1989; N = 828 registered voters statewide)

"Should Florida ban the manufacture, sale, and possession of some semi-automatic weapons, such as the AK-47, the Colt AR-15, and the UZI?"

Yes	No	Not Sure
80%	17%	3%

Michigan: Inside Michigan Politics
(March 27-April 7, 1989; N = 800 adults)

Should the sale and possession in Michigan of semi-automatic assault weapons such as the AK-47 and M-16 be banned?

Strongly Favor	66%
Favor Somewhat	5%
Strongly Oppose	21%
Oppose Somewhat	5%
Don't Know/Depends	4%

Minnesota: St. Cloud State University
(Reported in Star Tribune, August 17, 1989; N = 801 Adults)

"...Would you favor or oppose federal legislation banning the manufacture, sale and posession of semi-automatic assault guns, such as the AK-47?"

Favor	Oppose	No Opinion
68%	27%	5%

"When you vote, how important is a candidate's position on gun control?"

	Very Important	Somewhat Important	Not Important
Gun control supporters:	33%	48%	16%
Gun control opponents:	17%	48%	32%

Nebraska: World Herald Poll
(March 29 - 30, 1989; N = 605 registered voters)

"President Bush has placed a temporary halt on the importation of military-style semi-automatic assault weapons. Do you favor or oppose this action?"

Favor	Oppose	No Opinion
77%	14%	8%

"Would you favor or oppose a permanent ban on the sale of military-style semi-automatic assault weapons?"

Favor	Oppose	No Opinion
72%	21%	7%

Ohio: University of Cincinnati Poll
(February 2-10, 1989; N = 811 adults)

A ban on the sale of semi-automatic assault weapons...

Favor	Oppose	No Opinion
77%	18%	5%

Virginia: Mason-Dixon Poll
(January 31 - February 3, 1989; N = 831 registered voters)

"Would you favor or oppose requiring all citizens to have a permit in order to purchase a semi-automatic firearm in Virginia?"

Favor	Oppose	Undecided
81%	17%	3%

XI. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 747 as reported are as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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PART I—CRIMES

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CHAPTER 14—FIREARMS

Sec.
921. Definitions.
922. Unlawful acts.
923. Licensing.
924. Penalties.
925. Exceptions: Relief from disabilities.
926. Rules and regulations.
927. Effect on State law.
928. Separability clause.
931. Additional assault weapons.

§ 921(a). Definitions

(25) The term "assault weapons" means any firearm designated as an assault weapon in this paragraph, including:

(A) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

(B) Action Arms Israeli Military Industries UZI and Galil,

(C) Beretta AR-70 (SC-70),

(D) Colt AR-15 and CAR-15,

(E) Fabrique Nationale FN/FAL, FN/LAR, and FNC,

(F) MAC 10 and MAC 11,

(G) Steyr AUG,

(H) INTRATEC TEC-9, and

(I) Street Sweeper and Striker 12.

§ 922. Unlawful acts

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year *or a violation of section 924(i) of this chapter;*

(q)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer, import, transport, ship, receive, or possess any assault weapon.

(2) This subsection does ot apply with respect to—

(A) transferring, importing, transporting, shipping, and receiving to or by, or possession by or under, authority of the United States or any department or agency thereof, or of any State or any department, agency, or political subdivision thereof, of such an assault weapon, or

(B) any lawful transferring, transporting, shipping, receiving, or possession of such a weapon that was lawfully possessed before the effective date of this subsection.

(r)(1) Whoever, during and in relation to the commission of a crime of violence or a drug trafficking crime (including a crime of violence or drug trafficking crime, which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries an assault weapon, shall, in addition to the punishment provided for the commission of any such other crime committed by the defendant, be sentenced to a term of imprisonment for not less than 10 years.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(s)(1) It shall be unlawful for any person to sell, ship, or deliver an assault weapon to any person who does not fill out a form 4473 (pursuant to 27 CFR 178.124), or equivalent, in the purchase of such assault weapon.

(2) It shall be unlawful for any person to purchase, possess, or accept delivery of an assault weapon unless such person has filled out such form 4473, or equivalent, in the purchase of such assault weapon.

(3) If a person purchases an assault weapon from anyone other than a licensed dealer, both the purchaser and the seller shall maintain a record of the sale on the seller's original copy of such form 4473, or equivalent. The purchaser and seller shall both retain copies of such form for all subsequent transactions regarding such assault weapon.

(4) Any current owner of an assault weapon which required retention of such form 4473, or equivalent, pursuant to the provisions of this subsection who, prior to the effective date of this subsection purchased such a weapon, shall, within 90 days after the issuing of regulations by the Secretary pursuant to paragraph (5) of this section, request a copy of such form from any licensed dealer, as defined in this title, in accordance with regulations prescribed by the Secretary pursuant to paragraph (5) of this section.

(5) The Secretary shall, within 90 days after the date of enactment of this section, perscribe regulations for the request and delivery of such form 4473, or equivalent.

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§ 924. Penalties

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 802 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.),

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(*h*) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i) Whoever knowingly fails to acquire such form 4473, or equivalent (pursuant to 27 CFR 178.124), with respect to the lawful transferring, transporting, shipping, receiving, or possessing of any assault weapon, as required by the provisions of this chapter, shall be fined no more than $1,000, or imprisoned for not more than 6 months, or both.

(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not less than 2 or more than 10 years, and may be fined under this title.

(k) Whoever, with the intent to engage in, or to promote, conduct which—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

(2) violates any law of a State relating to any controlled substances (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3));

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned for not more than 10 years, fined under this title, or both.

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§ 931. Additional assault weapons

The Secretary, in consultation with the Attorney General, may, when appropriate, recommend to the Congress the addition or deletion of firearms to be designated as assault weapons.

CHAPTER 227—SENTENCES

§ 3583. Inclusion of a term of supervised release after imprisonment

(h) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the terms of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.

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